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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 006122

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DEPARTMENT FOR EUR/SE

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SUBJECT: APPEALS COURT RULING COULD LEAD TO REDISTRIBUTION
OF PARLIAMENTARY SEATS

REF: ANKARA 5848

Classified by Acting Political Counselor C.O. Blaha; reasons
1.5 b and d.

11. (C) Summary: As expected, Turkey's Supreme Appeals Court upheld a lower court ruling convicting leaders of the pro-Kurdish Democratic People's Party (DEHAP) of election fraud. The High Election Board (YSK) will determine how to respond to the ruling. Most of our contacts predict the YSK will decide to maintain the November 2002 election results, thereby preserving the current allocation of parliamentary seats; Embassy believes this is the most likely outcome. But there is wide speculation that opponents of the ruling AK Party could pressure the YSK to cancel DEHAP's November votes and reallocate parliamentary seats, allowing the True Path Party (DYP) to enter Parliament. Reallocation could potentially cause PM Erdogan to lose his position. There is no official deadline for the YSK decision. End Summary.

Court Issues Expected Ruling

12. (U) Turkey's Appeals Court on September 29 ruled unanimously to uphold the lower court convictions of former DEHAP leader Mehmet Abbasoglu and three former party administrators on charges of forging documents in order to qualify the party for the November 2002 elections. The ruling upholds two-year prison sentences for the defendants. DEHAP attorneys cannot appeal the decision, but they can seek a "correction" from the same court that issued the ruling, a technicality unlikely to be effective. The lead defense attorney said publicly that he will appeal to the European Court of Human Rights.

Two Options for Election Board

13. (C) As a result of the widely anticipated ruling, DYP, third-place finisher in the November elections, is expected to appeal to the YSK for a reallocation of parliamentary seats. As reported reftel, YSK has two options for responding to such an appeal: 1) maintain the November 2002 election results despite the ruling; or 2) cancel DEHAP's votes in the election and recalculate the vote percentage garnered by each party. Our sources overwhelmingly reject press speculation that the YSK might completely annul the November elections, deeming such an option politically risky and legally questionable.

14. (C) Under option two, DYP would receive 66 seats and become the third party in Parliament, joining the ruling Justice and Development Party (AK) and opposition Republican People's Party (CHP). Some speculate that such a decision could cause PM Erdogan to lose his post, by annulling the provincial by-elections that allowed Erdogan to enter Parliament. Our sources indicate that leading YSK members oppose redistribution as a threat to the constitutionally enshrined concept of "administrative stability." However, some speculate that the YSK could be vulnerable to pressure from AK opponents who want to reduce the ruling party's parliamentary majority (reftel). Option two would still leave AK with a majority in the 550-seat legislature.

No Official Timeline

15. (U) There is no regulation requiring the YSK to respond to an appeal by a set deadline, though there will be political pressure to resolve the case quickly.

DYP Will Appeal Quickly

16. (C) DYP Vice Chairman Oguz Tezmen said publicly he expects the party to appeal to the YSK by September 30. Mehmet Ali Bayar, another DYP vice chairman, averred to us that there is "no timeline" for appealing, but acknowledged an appeal could come "at any second." Bayar argued that the YSK should reallocate seats, claiming that a decision to maintain the November election results would be "political."

DEHAP Calls Ruling "Psychological Warfare"

17. (C) DEHAP Vice Chairman Nazmi Gur told us the Appeals Court issued its ruling immediately after DEHAP attorneys presented their defense, proving, he argued, that the decision was "political" and "pre-arranged." Gur described the ruling as an element of "psychological warfare" by the State against Kurds. DEHAP attorney Guven Ozata publicly criticized the ruling as a rejection of the two million voters who cast ballots for DEHAP. A number of AK and CHP leaders argued against a reallocation of seats. AK Deputy Group Chairman Kapusuz maintained that the voters should not be punished for the crimes of a few individuals. CHP Deputy Group Chairman Koc said a reallocation would threaten 11 months of accomplishments under the current government.

18. (C) Turkish political parties are required to organize in half the country's provinces, 41 of 81, by six months prior to elections in order to participate. The DEHAP officials were convicted of falsifying documents in order to give the appearance of meeting this requirement. Nazmi Gur claimed to us recently that the charges are completely fabricated. Gur noted that officials initially verified that DEHAP had organized in 63 provinces, then later, 25 days before the elections, changed their minds. Gur said parties submit documents to local authorities, who are supposed to pass them up the chain to the Court of Appeals Chief Prosecutor, and argued that it would be easy to "lose" documents along the way.

Comment

19. (C) We continue to believe that the most likely outcome is a YSK decision to deny reallocation. YSK board members appear to put a premium on order, and one member made it clear to us he doubts the validity of the charges against DEHAP. While there is pressure from some quarters to reallocate, there is also considerable resistance from the parties in Parliament. Though DYP stands to gain from a reallocation, such a move is risky for AK opponents overall. AK leaders continue to tell us the party will call early elections if the YSK reallocates seats, a move they believe will increase their majority.

EDELMAN